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GARNETT et al. v. COMMONWEALTH.

Jan. 12, 1915.

[83 S. E. 1083.]

1. Indictment and Information (§ 147*)—Sufficiency—Caption.—Where the second count of an indictment, when read in connection with the caption, showed the venue, swearing of the grand jury, and in what court the indictment was found, it was not demurrable, though standing alone, independent of the counts on which defendant was acquitted, it failed to show these matters.

[Ed. Note.—For other cases, see Indictment and Information, Cent. Dig. §§ 490-494; Dec. Dig. § 147.* 7 Va.-W. Va. Enc. Dig. 440; 14 Va.-W. Va. Enc. Dig. 533.]

2. Criminal Law (§ 424*)—Admissions—Admissibility—Codefendants.—Declarations in the nature of admissions, made by the declarant, in the absence of his former associate in crime, after consummation of the common enterprise, are ordinarily admissible only against the declarant, and not against his former associate.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1002-1010; Dec. Dig. § 424.* 1 Va.-W. Va. Enc. Dig. 78; 14 Va.-W. Va. Enc. Dig. 7.]

3. Witnesses (§ 35*)—Competency—Examining Magistrate.—That a witness was the justice of the peace before whom defendants were originally tried did not render him incompetent to testify.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 77, 78; Dec. Dig. § 35.* 13 Va.-W. Va. Enc. Dig. 905.]

4. Criminal Law (§ 778*)—Instructions—Burden of Proof.—An instruction, in a prosecution for entering a dwelling without breaking in the nighttime with intent to steal, that when the commonwealth has shown the unlawful entry the burden is on accused to prove that his entry was for a lawful purpose, was erroneous.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1846-1852, 1854-1857, 1960, 1967; Dec. Dig. § 778.* 4 Va.-W. Va. Enc. Dig. 75; 14 Va.-W. Va. Enc. Dig. 285.]

5. Criminal Law (§ 829*)—Refusal of Instructions—Repetition.—The refusal of instructions substantially covered by those given was not error.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 2011; Dec. Dig. § 829.* 7 Va. W. Va. Enc. Dig. 742; 14 Va.-W. Va. Enc. Dig. 565; 15 Va.-W. Va. Enc. Dig. 521.]

Error to Circuit Court, King William County.

Brooking Garnett and another were convicted of entering a

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

dwelling house without breaking, with intent to steal, and bring error. Reversed.

Isaac Diggs, of Richmond, for plaintiffs in error.
The Attorney General, for the Commonwealth.

CITY OF NORFOLK *v.* SOUTHERN RY. CO. et al.

Jan. 12, 1915.

[83 S. E. 1085.]

1. Dedication (§ 44*)—Public Use—Sufficiency of Evidence—Ejectment.—In ejectment, wherein a city sought to recover against lessees on the ground that the leases were ultra vires in that the property leased was held by the city, the lessor, in trust for the public, and hence could not be leased for railroad purposes, evidence held insufficient to show any dedication of the land to a public use, where it appeared that for more than 100 years the property had been used for purposes other than that for which it was claimed it had been dedicated, without any objection being made by the city or its inhabitants.

[Ed. Note.—For other cases, see Dedication, Cent. Dig. §§ 85-87; Dec. Dig. § 44.* 4 Va.-W. Va. Enc. Dig. 357; 14 Va.-W. Va. Enc. Dig. 313; 15 Va.-W. Va. Enc. Dig. 262.]

2. Dedication (§ 41*)—Public Use—Presumption.—Merely that property has been used for certain public purposes by a municipality creates no presumption that the municipality has dedicated it to the public or lost dominion over it for other purposes.

[Ed. Note.—For other cases, see Dedication, Cent. Dig. §§ 80, 82; Dec. Dig. § 41.* 4 Va.-W. Va. Enc. Dig. 358; 14 Va.-W. Va. Enc. Dig. 313; 15 Va.-W. Va. Enc. Dig. 262.]

3. Dedication (§ 16*)—Usage—Presumptions—Acts and Declarations.—While the intent to dedicate may be inferred from circumstances connected with a long and uninterrupted user by the public, the owner's acts and declarations indicating intention to dedicate must be unmistakable to have that effect.

[Ed. Note.—For other cases, see Dedication, Cent. Dig. §§ 15-49; Dec. Dig. § 16.* 4 Va.-W. Va. Enc. Dig. 358; 14 Va.-W. Va. Enc. Dig. 313; 15 Va.-W. Va. Enc. Dig. 262.]

4. Municipal Corporations (§ 225*)—Public Property—Lease—Consideration.—The benefits to a city from the location of a deep-water terminus and passenger station on property leased from the city by a railroad company was a sufficient consideration for the lease.

[Ed. Note.—For other cases, see Municipal Corporations, Cent.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.